STRENGTHENING CORPORATE RESPONSIBILITY

The case for mandatory due diligence to tackle the UK's global deforestation footprint

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INTRODUCTION

Whilst the UK government grapples with multiple immediate challenges related to the Covid-19, resilient and sustainable supply chains will be crucial to its emergence from the pandemic. The time has come to rebuild an economy that takes responsibility for its global environmental footprint and works with communities.

In a globalised world, consumption and investment can drive and accelerate environmental destruction in some of our most precious and fragile landscapes, sometimes thousands of miles away.

Businesses, including financial institutions, that take greater heed of social or environmental concerns are likely to be more resilient in these turbulent times.[1] Supply chains that perpetually require the destruction of forests are unsustainable and out of touch with local realities, rendering them ultimately less stable.

Guidelines and voluntary approaches are failing to prevent environmental destruction at scale. [2] As we emerge from the current crisis, the UK should introduce mandatory due diligence for businesses that are UK-based or that provide goods or services in the UK to identify, prevent and mitigate their risks and impacts on the environment, human rights and governance.

Efforts to rebuild the global economy on a sustainable footing will be critical to our emergence from the current crisis. Action on the UK's global deforestation footprint could form a key part of the UK's aspirations to take leadership in the new economies that are emerging in an era of unprecedented social and ecological crisis.[3]

The UK has a particular opportunity to play a global leadership role in this agenda as it is due to host the next key climate summit and set out new rules on the environment through the Environment Bill.

We are calling on the UK government to take concrete action to tackle deforestation, environmental harm and human rights abuses through the introduction of mandatory due diligence legislation.

This would set an unambiguous signal that the UK government and businesses are aligned with forest protection and that producer countries have more to gain from creating trusted forest enforcement processes. This would see the UK using its market power to drive a 'race to the top', fostering innovation from producer companies and countries.

The report of the government appointed Global Resource Initiative (GRI) taskforce, which included a number of leading businesses and received input from over 200 organisations and individuals, recently recommended in its final report to government that

"the government urgently introduces a mandatory due diligence obligation on companies that place commodities and derived products that contribute to deforestation on the UK market and to take action to ensure similar principles are applied to the finance industry".[4]

Any due diligence obligation should also be accompanied by measures to support producers in developing countries to improve their environmental standards and human rights practices and to improve livelihoods.

This briefing sets out the key components that should be included in due diligence legislation requiring businesses to conduct checks on their financing and supply chains to identify, prevent and mitigate deforestation risks and impacts, and associated human rights abuses.

We draw on lessons from Global Witness and ClientEarth's combined experience of due diligence in operation across a range of sectors.[5] The briefing is intended to inform discussions amongst policy makers, and encourage a more rigorous and consistent approach to due diligence requirements and practice.

In this briefing, we focus on the particular case for due diligence in relation to deforestation risks where there is an urgent and pressing need for action as recognised by the GRI report, but we believe that ultimately due diligence should apply across all sectors, supply and investment chains and encompass environmental, human rights and governance risks and impacts.[6]

THE UK'S DEFORESTATION FOOTPRINT

The production for UK imports of commodities associated with deforestation – like beef, leather, soy, palm oil and timber – has been shown by WWF and RSPB to take up an area of land almost the size of the UK.[7]

As well as the UK's role in deforestation associated with its consumption, the UK's financial sector provides a lifeline of funding for companies driving deforestation. A recent

Global Witness report, ‘Money to Burn’, found that UK-based financial institutions have been the single biggest source of international finance for six of the most harmful agribusiness companies involved in deforestation in Brazil, the Congo Basin and Papua New Guinea - providing a staggering £5 billion over the last six years.[8]

The destruction of tropical forests like the Amazon is one of the starkest examples of the impact of global consumption and financing on the environment and climate. Despite widespread agreement on the crucial role of forests for our climate and biodiversity, as well as for the livelihoods of local communities, deforestation continues apace.

Deforestation is the second largest source of anthropogenic greenhouse gas emissions.[9] A recent study showed that over a four-year period (2010–2014) international trade drove between 29% and 39% of deforestation-related emissions.[10]

Globally, tree cover loss has been rising steadily over the past 18 years. In 2019 we lost the equivalent of a football pitch of primary forest every 6 seconds.[11] Just over a quarter of global tropical forest loss is due to deforestation through permanent land use change for the production of commodities, including beef, soy, palm oil and wood products, and this can be as high as 78% in South East Asia and 56% in Latin America.[12]

The impact of deforestation, forest degradation and grabbing of forested land for industrial agriculture and illegal logging is also devastating for the human rights of communities that reside in and around the forests and rely on them for their livelihoods.

Local communities on the frontline of efforts to preserve ecosystems and fight climate breakdown are under increasing attack from some industries trying to expand their reach. In 2018, Global Witness documented 164 killings of land and environmental defenders – ordinary people murdered for defending their homes, forests and rivers against destructive industries. Countless more were silenced through violent attacks, arrests, death threats or lawsuits.[13]

UK GOVERNMENT ACTION

The UK government recognises the need for action in its 25 Year Environment Plan which stated that

> “The UK is determined to make good on its clear commitments to support companies to implement zero-deforestation supply chains. […] Our goal is to create demand-side incentives for sustainable international sourcing at home, while supporting supply-side improvements by influencing, and investing in better resource governance in trading partner countries.”[14]

This clear statement of commitment led to the establishment of the Global Resource Initiative (GRI) taskforce by the UK government to consider how to reduce the UK’s climate and environment impacts.[15] The taskforce report concluded that a mandatory due diligence obligation was necessary to send a strong market signal for sustainable commodity production.

The UK government plays a leading role in international initiatives set up to galvanise action to tackle deforestation, including the

Amsterdam Declaration and Tropical Forest Alliance, as well as through DFID funded programmes like the Forest Governance, Markets and Climate Programme. It is therefore well-placed to lead action on this agenda.

The UK Government has repeatedly stated a desire for global green leadership, including by hosting the next key climate summit - the UNFCCC COP, setting up a Global Ocean Alliance and launching a new Environment Bill. The recommendations of the GRI taskforce create a crucial opportunity for the UK to make good on its ambition and take concrete action to tackle its deforestation footprint. New legislative measures will be needed, and the Environment Bill should set in motion the processes needed to create a mandatory due diligence regime.

CORPORATE COMMITMENTS AND REPORTING

Some companies recognise their responsibility for the role of their operations, imports and financing in deforestation and have adopted policies to address this. However, these policies are not mandatory and remain at the companies' discretion – so there is no consistency between the commitments made by various corporates and implementation is generally poor. There is also a lack of disclosure, transparency and accountability in their implementation, with limited capacity for business efforts to be monitored, verified or compared by independent third parties. [16]

The stark conclusion of a comprehensive analysis of corporate policies on deforestation was that "*The voluntary commitments to end tropical deforestation by 2020 have failed*". The authors of the study, Global Canopy, observed a lack of any action by nearly half of the companies and financial institutions assessed. Some companies were found to have dropped previous commitments. 40% of the companies assessed did not have any deforestation commitments and 68% of the financial institutions had no deforestation policy.[17]

Key companies like Cargill and Nestlé have already admitted that the agricultural commodities industry will fall short of eliminating deforestation from their supply chains by 2020.[18]

THE BUSINESS CASE FOR MANDATORY DUE DILIGENCE

Effective due diligence that addresses environmental risks and impacts is in the interest of companies as environmental and human rights considerations can entail significant material risks. These can include operational blockages and stranded assets, as well as reputational, financial and legal risks.[19]

Undertaking due diligence can build a company's 'social licence to operate' the legitimacy it has to operate by having the approval of stakeholders affected by its operations.[20] For example, a company may have the necessary business licences to convert forestland for agriculture purposes. But if it does not take into account the needs and rights of local communities living in the area, it risks rejection in the local area where it operates. This in turn may ultimately impact business, including through the disruption of operations, and reputational impacts.

Legislation requiring companies to identify, prevent and mitigate environmental damage and human rights abuses can help them pre-empt and manage these risks and provide an open and fair competition.

Mandatory due diligence could ensure that no business pursues profits linked to deforestation. This would see supply chains and financing redirected towards sustainable activities that will endure and thrive as the economy shifts to adapt to new realities in the climate crisis age – benefitting both the environment and businesses.

Mandatory due diligence legislation would also help to create a predictable business framework, providing clarity on the obligations of businesses and standardising processes to manage deforestation, environmental and human rights-related risks.

A business survey led by the British Institute of International and Comparative Law on introducing a new duty to prevent human rights harms in a company's own activities and those of its business relationships found that the majority of businesses consulted agreed that this would provide legal certainty and level the playing field.[21]

There is also a growing demand from the private sector for regulation. For example, Nestlé has made a public statement supporting "*appropriate legislation that aims at encouraging companies to address their potential impacts on human rights and the environment and would lead to increased transparency, collaborative action and a levelled playing field".*[22] Over a hundred investors, with $5 trillion in assets under management, have also called on governments to institute mandatory human rights due diligence regulation.[23]

DUE DILIGENCE PROVISIONS IN UK LAW

Some of the checks which form part of due diligence processes are already familiar to businesses and financial institutions thanks to existing requirements under UK law. These checks are used to ensure that businesses are not engaged in certain illegal matters. Hence we see due diligence used as the key risk identification and mitigation strategy found in the Bribery Act 2010, anti-money laundering regulations[24], the Modern Slavery Act 2015 and the Timber Regulation.[25]

In these different pieces of legislation, the concept and meaning of due diligence is either spelled out in legislative text, as in the anti-money laundering regulations[26] or the Timber Regulation[27]; or is mentioned, explicitly or implicitly, in the legislative text and developed in further statutory guidance.

Although due diligence is not referenced in the text of the Bribery Act 2010, it is referred to in guidance as "*firmly established as an established element of corporate good governance*". The guidance explains how due diligence procedures are a form of bribery risk assessment as well as a means of mitigating risk.[28]

The anti-money laundering regulations rely on due diligence and risk assessment as a key tool for identifying money laundering risk. The requirement to undertake due diligence on anti-money laundering risk applies to various different businesses, including banks and other financial institutions, lawyers, accountants, company service providers, estate agents and casinos. The regulations contain extensive details on when and how to apply due diligence, including assessing whether a customer poses a high money laundering risk, and carrying out enhanced due diligence if so.[29]

Under the Modern Slavery Act, businesses are expected to report on the due diligence processes in relation to slavery and human trafficking in its business and supply chains. However, it is a relatively weak obligation which also gives businesses the option to report that they have taken no action.[30]

The Timber Regulation requires businesses trading in timber and timber products to undertake due diligence to ensure that they originate from legal sources and specifies the steps of the due diligence process, including: accessing and assessing information to evaluate the risk and taking steps to mitigate the risk.[31]

With the exception of the Timber Regulation, these laws tackle risks that are different to deforestation, however they can inform the development of rules on due diligence for deforestation risk or other environmental harms. They also demonstrate that due diligence is an established business practice understood and elaborated in law, which could be applied to other risks such as deforestation and forest-related human rights abuses.

WHAT IS DUE DILIGENCE?

Due diligence is most known to be an established business practice routinely undertaken to address commercial and legal risks that may impact the company.

The UN and OECD have developed due diligence standards for corporates, endorsed by the UK government, that address risks related to environmental harms and human rights abuses.

The UN Human Rights Council has unanimously endorsed a set of Guiding Principles on Business and Human Rights in 2011 which state that all business enterprises have an independent responsibility to respect human rights, and that in order to do so they must exercise human rights due diligence to identify, prevent, mitigate and account for how they address impacts on human rights.[32] This was further developed by the Human Rights Reporting and Assurance Framework Initiative, in their UN Guiding Principles Reporting Framework and Implementation Guidance, which describes four key steps to conduct due diligence:

"assessing actual and potential human rights impacts; integrating and acting on the findings; tracking responses; and communicating about how impacts are addressed."[33]

The OECD Guidelines for Multinational Enterprises (MNEs) provide a comprehensive set of principles and standards for responsible business conduct.[34] They encode responsible business conduct and include a comprehensive approach to risk-based due diligence and responsible supply chain management. The Guidelines have been multilaterally endorsed by all OECD members, including the UK, and are open for adherence to interested non-OECD members, with around 50 countries in total adhering to the Guidelines.[35]

The OECD has also produced Guidance for Responsible Business Conduct that provides a detailed practical support tool for companies to implement the OECD Guidelines. Similar implementing guidance has been created for sector-specific due diligence, including guidance for agricultural supply chains and institutional investors.

The 2018 OECD Guidance for Responsible Business Conduct explains that:

"The concept of due diligence under the OECD Guidelines for MNEs involves a bundle of interrelated processes to identify adverse impacts, prevent and mitigate them, track implementation and results and communicate on how adverse impacts are addressed with respect to the enterprises' own operations, their supply chains and other business relationships."[36]

Due diligence processes should be integrated into company management systems so that environmental and human rights considerations become an integral part of business decision-making, such as choosing what to finance, which businesses to purchase from and what businesses with which to partner.

Thus due diligence has an important proactive, forward-looking function that identifies and assesses potential risks and adverse impacts on the environment and human rights so that decisions can be made to avoid these before entering into new business activities. Due diligence is also a reactive process, used to manage impacts that have already occurred or as a tool to correct and remedy ongoing impacts that the company is made aware of.

It is an ongoing process, based on continual improvement over time, with feedback loops so that the companies can progressively improve their systems and processes over time. Consequently, it is an iterative process rather than a one-off 'box-ticking' exercise.

KEY STEPS OF A DUE DILIGENCE PROCESS FOR DEFORESTATION RISKS

Multiple environmental, social and governance risks and impacts can arise at different stages of the agricultural supply chain[37], particularly when the land for proposed use for the production of the commodities is forested land. The section below highlights in more detail the risks and impacts associated with deforestation and related human rights abuses and the key due diligence steps needed to respond to and prevent these. It is important to note that 'due diligence' is not a singular set process – it is often a bundle of processes carried out by businesses to identify, prevent and manage adverse risks and impacts. These processes evolve and adapt over time.

1. Identify and assess risks and impacts

The main purpose of identifying risks and impacts is to pinpoint potential or actual adverse impacts on people and the environment that could result or have resulted from a company's operations and its business relationships, including within its supply chain or financing.

For existing operations, due diligence should identify and assess ongoing adverse impacts and harms as well as potential risks. While it can be challenging to identify relevant information, especially throughout supply chains, companies can share information, including through multi-stakeholder initiatives.[38]

Where a company is setting up new operations or engaging new business partners, this includes identifying the actors involved in the new supply chain, such as suppliers and contractors, and assessing their policies and practices, as well as their production and processing sites, in order to assess and prioritise specific risks, and identify 'red flags' for enhanced due diligence.

Businesses should be attentive to risks associated with specific geographic areas and understand that the nature of risk across supply chains will present differently for each forest-risk commodity. Those operating, sourcing from or financing businesses active in forest-risk supply chains should also become familiar with specific methodological tools that can help identify deforestation-risk, which can also serve to avoid illegal practices. For example, the High Carbon Stock Approach is one tool that can assist businesses to apply a robust framework for classifying forests.[39] Additional tools can ensure that businesses acting to avoid deforestation are not implicated in other problematic practices – such as converting biodiverse ecosystems like wetlands or savannah.

In the case of deforestation risk, land and forest rights typically sit at the nexus of environmental, social and governance issues. The complexity of overlapping and intersecting tenure regimes, regulations and prevalence of natural resource-related corruption or conflict make it particularly important for companies to undertake adequate due diligence. Companies operating without the free, prior and informed consent (FPIC) of local people, particularly indigenous communities, risk triggering local evictions, land-tenure disputes or unlawful forest conversion.[40]

Companies should therefore identify the location of the site of production and determine the legitimacy to use the land and associated forest resources in collaboration with local stakeholders and in a transparent and highly participatory manner.

2. Take action on risks and impacts identified – by ceasing, preventing and mitigating

The point of identifying risks and adverse impacts is for companies to avoid and reduce them through changing their operational design and taking the necessary mitigation measures. This could involve the company, its supply chain partners or clients ceasing operations (for example, ceasing further clear-cutting operations) or identifying the measures needed to mitigate a specific impact and prevent or avoid further negative impacts.

Mitigation and preventative measures may require a company to undertake a series of actions – such as changing its purchasing practices, amending contracts with suppliers, setting up early warning systems with affected stakeholders, providing support to suppliers to change their practices, monitoring whether targets are met, and including science-based targets for reducing environmental impacts.

Mitigating actions under a due diligence system should first seek to improve practices throughout the supply and investment chain. Where such supply chain improvements do not sufficiently reduce the risks in a timely way, changing purchasing and financing decisions should be considered. Such sequencing is important to avoid due diligence resulting in actions which are counter to the specific desires or wishes of affected peoples and communities, or which may include immediate divestment and reduction of trade with producer countries. Due diligence should rather be a tool to allow such financing and trade in a responsible way.

Companies should take an organised approach to conducting due diligence. This means incorporating planned actions into their on-going company management systems and procedures, and potentially also into an action plan that sets out a clear set of steps with timeline and budget. With business relationships, this could become a corrective action plan with suppliers or banks writing into their contracts that they require their financial services clients to comply with deforestation policies.

3. Monitoring and tracking responses as a check on effectiveness

As part of the due diligence process, a company should check periodically to see if its actions in response to an impact are actually reducing the specific harm and if not, to adjust them or develop other actions. This is also a matter of good business sense to ensure that a company and its business partners are taking the most effective and efficient steps in addressing key risks and impacts, particularly whenever something changes in a supply chain or new operations are added.

4. Stakeholder participation

Involvement of stakeholders in the due diligence process is a core part of its conduct, as set out in the OECD Guidelines, the United Nations Guiding Principles on Business and Human Rights and required by the French Duty of Vigilance law.[41] Involving external stakeholders that might be affected by a company's operations (for example local residents who are not working for, or contracting with, the company) will help the company understand the core concerns regarding current, ongoing or future activities, so that they may be taken into account during due diligence. A lack of meaningful participation can result in companies failing to understand and take preventative action to avoid conflicts over land rights including unfair and illegal evictions.[42]

The Modern Slavery Act practical guide advises that businesses seek to investigate working conditions with support from expert independent third parties and civil society stakeholders, and hear from workers themselves about their working conditions.[43]

Reporting and disclosure are also key steps in conducting due diligence which we address in the section on transparency and reporting below.

OTHER KEY ASPECTS OF DUE DILIGENCE

In addition to the steps outlined above, there are a number of elements to consider when developing a legislative framework for due diligence. In this section we set out the key characteristics of effective due diligence legislation.

Standards to define risks

Due diligence legislation should provide a clear set of standards for assessing and dealing with risks and impacts. Done properly, this would ensure a clear and consistent understanding of the concepts of deforestation risks and related human rights abuses.

Any such standards must be developed in consultation with stakeholders including civil society representatives and the private sector.[44] They should be integrated into the legislation and further elaborated in delegated acts and statutory guidance, which could be updated to ensure they tackle current risks.

These standards and guidance relating to them should include a list of potential risks that companies should take into account, including the risk of corruption, deforestation, land tenure conflicts, child and forced labour and other severe breaches of labour rights and presence of armed groups/conflict, etc.

The level of risk can vary within countries and over time, so legislation and accompanying guidance should not be too prescriptive in this regard. Businesses should instead be encouraged to carry out ongoing risk assessments in all operations, undertaking research including engaging with stakeholders and reviewing reports from governments, international organisations, NGOs, media, industry and the UN, with particular attention to the impacts of associated commercial activities on conflict, human rights and the environment in the country/region.

While crucial that companies assess the risks of illegality in their supply and investment chains, the set of standards should also include sustainability criteria relating to human rights and environmental protections. This is needed because national legal frameworks may lack the necessary provisions to protect forests and the people depending on them for their livelihoods. Furthermore, to attract investment some producer countries may decide to deregulate in the environment and forestry sectors. The development of standards or guidance relating to risk of environmental harm or human rights abuses should also take into account a number of key international standards, binding conventions, and declarations. This includes legally binding treaties such as: the Convention on Biological Diversity (CBD) 1992 and the Indigenous and Tribal Peoples Convention 1989; international non-binding human rights instruments such as the UN Declaration on the Rights of Indigenous Peoples 2007 as well as non-legally binding guidelines like the Voluntary Guidelines on the Responsible Governance of Tenure of Land, Fisheries and Forests 2012, and the United Nations Guiding Principles on Business and Human Rights 2011. These instruments as well as principles developed through multi-stakeholder consultation, such Accountability Framework Initiative, could also inform standards.

However, it should be noted that even if forests are referenced in several international treaties, there is not yet an international binding treaty on forests that specifically regulates or defines the activities that can be undertaken in forests or sets protections.

Role of certification schemes

Certification schemes exist for some agricultural commodities, such as the Roundtable on Sustainable Palm Oil (RSPO) and the Roundtable on Responsible Soy Association (RTRS). However, these have their limitations, including weak auditing[45], and are no substitute for rigorous and mandatory due diligence by companies on their supply chains.[46]

Furthermore, the Director of Environmental Sustainability at The Consumer Goods Forum, recently concluded that:

> "we have found that certification is a tool, but not the comprehensive solution the world needs to end deforestation."[47]

According to the Timber Regulation, operators can use certification or other third party verified schemes when assessing and mitigating the risk of timber being illegally logged, but cannot use it on its own to evidence compliance with the Timber Regulation.[48] New due diligence legislation should follow a similar approach by not permitting companies or enforcement authorities to rely only on certification or industry-led schemes but rather requiring rigorous due diligence by the company itself.

Likewise, new due diligence legislation should avoid over-relying on auditors or industry-led schemes. Where auditors or such schemes are used, high standards should be demanded and enforced – otherwise, this could create loopholes that undermine the effectiveness of legislation.

Product scope

Some due diligence obligations only apply to companies placing certain products on the market. This is currently the case for the Timber Regulation that applies to those placing timber and timber products on the market. On the other hand, the Modern Slavery Act and the Anti-Bribery Act do not have a specific commodity focus, but apply to businesses either incorporated in the UK or carrying out business in the UK.

To address deforestation and associated human right abuses, new due diligence legislation should provide particular and specific measures for agricultural products being placed on the UK market that are of higher risk of being associated with deforestation, for example soy, palm oil, rubber, beef and cattle products.

Addressing deforestation risks should be a priority for the UK government but ultimately due diligence should apply across all sectors, activities, supply and investment chains and encompass environmental, human rights and governance risks and impacts.

The scope of due diligence requirements should cover all relevant investments and financing that can be linked to, or contribute to, adverse environmental and human rights impacts through their investments or business relationships.[49]

Scope of companies

Due diligence laws often establish a threshold at which companies are required to comply with their requirements. The threshold can relate to the size of the company, like the French Duty of Vigilance law that uses number of employees; or turnover, like the Modern Slavery Act that requires statements from organisations with business in the UK and an annual turnover of £36m or more. In contrast, neither the Timber Regulation, anti-money laundering regulations nor the Anti Bribery Act set thresholds.

Thresholds and phased approaches can help lessen the burden on small and medium sized enterprises. However, these can create loopholes and undermine legislation as thresholds can be too high, or smaller companies with riskier supply chains can fall out of scope where arbitrary thresholds are set. They can also break up the flow of information across supply chains and fundamentally undermine the due diligence process.

If legislation intends to prevent deforestation and associated human rights abuses, it should ultimately cover operators of all sizes – this would also align with the United Nations Guiding Principles on Business and Human Rights, which highlights that all businesses have a responsibility to respect human rights.[50]

A proportionate, risk-based approach to due diligence would mean that companies where there is a lower risk of environment or human rights impacts wouldn't need to do as extensive due diligence as a company importing a product or providing financing associated with higher risks. Due diligence is also tailored to a company's individual circumstances—such as its size, complexity of its supply chains, position in supply chain and the nature of its products or services.

This proportionate approach should mean that companies do not face unnecessary additional burdens. It could also involve a prioritisation of risk by starting to identify, assess, prevent and mitigate the most significant environmental, human rights and governance risks and impacts, and once those have been addressed, moving on to the less significant impacts within a reasonable timeframe.[51]

The concept of proportionality is emphasised in guidance documents for both the Modern Slavery Act and the Bribery Act. In the former, businesses are asked to adopt risk assessment policies and procedures that are proportionate to the organisation's size, structure, location of activities and supply chain(s), and nature of business(es). In the latter, the guidance states that the level of risk will be linked to the size of the organisation and the nature and complexity of its business, but size will not be the only determining factor.

Furthermore, it is essential that a due diligence system covers the entire supply chain – and that the company has its own systems, while also putting in place requirements on its direct suppliers and clients to check and report on compliance with supply chain due diligence requirements. This should include both "upstream" operations that relate to the initial stages of production as well as "downstream" operations that relate to processing the materials into a finished product. Similarly, financial institutions should have their own due diligence processes to ensure that their financing or business relationships are not connected to deforestation and related human rights abuses.

One lesson from the Modern Slavery Act has been that it does not impose a limit on how far down its supply chain an organisation should look, but the independent review found that companies were focussing on first and second tier suppliers. In response, the government said that in future updates to the statutory guidance it will make clear the need for organisations to strengthen their due diligence activities beyond their first and second tier suppliers over time as part of a risk-based approach.[52]

Under the French Duty of Vigilance law for example, it is specified that the company carrying out due diligence is obliged to do so throughout its own activities, those of its subsidiaries, as well as the activities of subcontractors, suppliers with whom it has an established commercial relationship.

Finance sector due diligence is key to market coherence, for example, by ensuring that banks are playing to the same rules as their clients. The 2020 GRI Taskforce report to the UK government emphasized the importance of ensuring that a due diligence obligation on deforestation did not exempt finance. This highlights a desire to ensure a due diligence approach that avoids loopholes that would enable some UK businesses – such as financial service providers – to remain engaged in financing associated with deforestation.

Over the last decade, the influence of technology has made it much easier for policy-makers, researchers, media, NGOs and analysts to track financing linked to deforestation and identify the role that UK finance plays as an integral part of the agribusiness supply chain.

Concurrently, a growing number of international and national institutions have clarified that the finance sector should not be exempt from corporate responsibility commitments and standards. Finance is included under the United Nations Guiding Principles on Business and Human Rights and the OECD Guidelines on Responsible Business Conduct.[53] Voluntary initiatives in forest-risk commodities including the Soft Commodities Compact and roundtable on Sustainable Palm Oil also include UK financial institutions among their membership. Similarly, the French Duty of Vigilance Law applies to all large French companies, including banks. Similarly, many banks themselves have policies on forest-related risks and over 100 financial institutions have committed to following the IFC Performance Standards that apply to forests, biodiversity and related human rights risks in their project-related financing through their membership of the Equator Principles voluntary initiative – although this financing instrument is rarely used in deals related to forest-risk commodities.

The distinction between 'finance' institutions and other types of companies is not always clear. For example, agribusiness firms can provide credit services or third-party financial services to farmers. If due diligence legislation excludes finance it could feasibly result in one arm of a company being prevented from undertaking harmful practices that drive deforestation while a separate arm of the company is able to finance, and profit from, these same activities.[54]

Strong UK leadership on due diligence on deforestation is also critical to the credibility of efforts by the City of London to try to establish the UK as a world leader on green finance.[55] Investors will be hesitant to trust in the reputation of financial institutions providing green finance if those same banks are making headlines for their exposure to forest destruction in their mainstream financial services. A 2019 Global Witness analysis of financing to six of the most harmful agribusiness companies linked to deforestation found UK based financial institutions to be the single largest provider of international credit and investment between 2013-2019.[56]

Transparency and reporting

The OECD highlights the importance of making timely and accurate information on due diligence processes and practices available to local and wider stakeholders.[57] Public disclosure of relevant and up to date policies and plans for implementing due diligence, as well as reporting on how a specific risk or impact is being mitigated and managed, monitored and tracked, should be made available on a company's website.

In order to be effective, future legislation should require all companies to conduct and report on their due diligence. Reporting requirements should not include the option to report that no due diligence has been undertaken, for example in the Modern Slavery Act which allows companies to report that they have taken no steps to address modern slavery in their supply chains. An Independent review of the Modern Slavery Act has called for this provision to be removed from the legislation.[58]

Legislation should specify in detail the elements that should be included in a report, including the format of the report and its frequency, relevant policies, plans for implementation of due diligence, risks identified and measures taken to mitigate the risks, monitoring and tracking, as well as sanctions for failing to publish reports. The government has recently acknowledged that this template is now needed for the Modern Slavery Act[59]. It should therefore be built into any new due diligence legislation.

Reporting and disclosure should also record information received in relation to risks and all actions taken to follow this up. It should also at least include issues relating to all relevant subsidiaries. This is important to ensure that investors and stakeholders can see detailed, meaningful information on specific risks ideally with clear info on improvement timelines.

Creating transparent supply chains and investment chains can also help businesses manage risks, by allowing for independent third parties and local stakeholders to alert businesses of deforestation and related human rights risks.

Disclosure should be in line with clear principles, for example open data principles, and ensure that it is accessible and comparable and kept up to date.

Public disclosure can help ensure accountability by enabling third parties, such as NGOs, to test the effectiveness of the due diligence measures when issues arise in the supply chain. It allows communities to better recognise a company's, including financiers', connection to activities in their area. It can help consumers make informed choices, which could itself help drive up standards of reporting and due diligence.

Legislation that focuses only on reporting will not guarantee change in business culture or ensure adequate identification, mitigation and prevent of risks. This is why it is crucial that due diligence obligations are clearly spelled out in law, with reporting as one element rather than the main focus of the obligation.

Board level accountability

Due diligence processes are likely to be more effective if the company makes its objectives clear to all stakeholders, including staff, business partners and customers. This is where corporate commitments to people and the planet, such as zero deforestation commitments, are important.[60] However, those commitments are meaningful only if made in conjunction with effective due diligence systems, and if embedded in the company's management systems (enterprise risk systems, purchasing system, contract management system and staff performance incentives etc). Aligning processes and procedures with businesses' commitments helps to ensure that the whole company's operations and its relationship with its suppliers or financial services clients are moving in the same direction.

Ensuring board, and individual director, responsibility can be crucial to embedding due diligence responsibilities and culture within an organisation. Following the 2008 financial crisis and problems in the banking sector, the UK government extended the Senior Managers and Certification Regime to strengthen individual accountability and improve standards of conduct. The regime provides that named senior managers at every bank have a duty of responsibility and can be held personally liable if the firm breaches one of its requirements. The Anti-Bribery Act guidance and Modern Slavery Act both recognise the importance of board level responsibility for policies. [61] [62]

Remedying harms done and liability for damages

Access to remedies is a core pillar of the UN Guiding Principles on Business and Human Rights. This is not just based on the principle of justice for the victims of adverse human rights impacts but also describes how processes to address grievances are vital to 'continuous learning' for businesses. This ensures that companies and financial institutions internalize and systematise learning from past issues.

The recent 2018 OECD Due Diligence Guidance for Responsible Business Conduct (RBC) describes in its chapter on remediation the relationship between remediation and due diligence by explaining that a *"provision of a remedy is not a component of due diligence but a separate, critical process that due diligence should enable and support. Grievance and remediation processes interact with, and may ultimately support due diligence by providing channels through which the enterprise can become aware of and respond to RBC impacts."*[63] The OECD guidance is not prescriptive on the type of remedy that may, for example, include restitution or rehabilitation, financial or non-financial compensation, punitive sanctions and taking measures to prevent future adverse impacts.

It also addresses enforcement mechanisms which are important for creating mechanisms to address remedy.

Any upcoming legislation should include remediation mechanisms in the form of legal processes with the appropriate access to justice (right to legal standing) for affected communities including when the harms occurred overseas.

As proposed by groups advocating for a UK corporate duty to prevent adverse human rights and environmental impacts,[64] commercial and other organisations should be liable for harm, loss and damage arising from their failure to prevent adverse human rights and environmental impacts of their domestic and international operations, products and services including in their supply and value chains.

Penalty regime

Sanctions are essential to ensure that due diligence requirements are respected. An absence of penalties for non-compliance is a factor in the weak application of the Modern Slavery Act, with many companies still failing to report at all, or to provide poor quality statements.[65]

A comparative study of the impact of the Bribery Act and the Modern Slavery Act on global supply chain governance concluded that the absence of sanctions for non-compliance in the Modern Slavery Act means there is no spur to change company practices.[66]

Under the Timber Regulation and the Bribery Act the maximum penalty is an unlimited fine. The Independent Review of the Modern Slavery Act recommends the government develop the necessary legislative provisions to strengthen its approach to tackling non-compliance, adopting a gradual approach: initial warnings, fines (as a percentage of turnover), court summons and directors' disqualification.[67]

Penalties should apply (at a minimum) to a failure to conduct due diligence, failure to conduct appropriate due diligence and a failure to fulfil reporting requirements.

An effective penalty regime ensures that the goal set by the law is achieved, and creates incentive to prevent future harm from happening. A penalty becomes dissuasive when non-compliance becomes economically unattractive.[68] Finally, a penalty is proportionate when it is appropriate to attain the objectives set by the legislation in question.

Additionally, a strong penalty regime creates a predictable business environment and an open and fair competition level. This ensures that businesses that are actively undertaking appropriate due diligence are not discouraged from their efforts, as will occur when competitors do not face substantive penalties for failing to meet regulatory or legislative requirements.

Checks and potential prosecutions depend on the resources given to authorities responsible for oversight. In its recent study on the Bribery Act, the British Institute of International & Comparative Law stated that the low number of prosecutions has been ascribed to a lack of resources.[69] This demonstrates the clear need for any oversight bodies to be well resourced and able to fully carry out their functions.

Role of third parties and complaint mechanisms

Complaint mechanisms that enable third parties, including the public, to highlight concerns and seek redress, can play an important role in ensuring accountability. They form a crucial part of operational level grievance mechanisms as outlined in the OECD Guidelines and the UN Guiding Principles on Business and Human Rights. These can take a number of forms, which should be included in any new due diligence legislation:

- Early alert mechanism: businesses should provide a system that will give an opportunity to workers, affected stakeholders and interested parties to inform the company about any risk of environmental harm and human rights violations throughout the supply and investment chain.
- Third party complaints/concerns: third parties such as NGOs often have valuable information about developments on the ground with evidence of environmental harm or human rights abuses associated with company operations/supply chain.
- Criminal or civil liability: As an example, as part of the French Duty of Vigilance law, companies considered to be breaching the law might face civil

liability action.[70] It will be key in any upcoming legislation to ensure that victims, including those outside the UK, are able to file a civil liability action (see section 'Remedying harms done and liability for damages' above).

RECOMMENDATIONS

The UK should show global leadership by taking concrete action to tackle deforestation and other environmental harm and human rights violations associated with companies based in the UK or providing good or services in the UK. The UK should introduce legislation that requires businesses, including financial firms, to conduct due diligence to identify, prevent, mitigate and report on their deforestation risks and impacts. Learning from the lessons of due diligence in place in other sectors and countries, due diligence legislation should:

- Take the OECD Guidelines for Multinational Enterprises and UN Guiding Principle Reporting Framework as starting points.
- Require companies, including financial institutions to undertake full and effective due diligence, which should include:
    - Full investigation of an identified risk
    - On-going, proactive and reactive processes
    - Systems and processes to identify, assess, prevent and mitigate, track and report on risks
    - Application across the whole of a company's supply and investment chain.
- Include a framework of standards that facilitate companies to assess and deal with risks and impacts
- Ensure that due diligence systems are not only relying on certification or industry led schemes.
- Ensure burdens on businesses are proportionate to risk.
- Ensure standardised full disclosure and transparency. Regular public reporting on supply chain due diligence policies and practices should be available on companies' websites.
- Include an effective, proportionate and dissuasive system of penalties and sanctions to ensure compliance.
- Ensure board level and individual director accountability.
- Ensure an appropriate framework of liability for damages caused.
- Include complaint mechanisms for interested third parties and affected individuals, including those outside the UK.

CONCLUSION

Action on the UK's global deforestation footprint should form a key part of the UK's aspirations to take leadership in the new economies that are emerging in an era of unprecedented social and ecological crisis.

The crucial importance of resilient and sustainable supply chains underlines the need for companies to understand the impact of their activities, supply chains and financing on people and the planet.

The clear evidence of continued deforestation of climate critical forests associated with UK consumption and finance presents an opportunity for policy makers to create open and fair competition for companies by requiring them to identify and mitigate deforestation risks.

Policy makers must ensure they learn lessons from the existing patchwork of regulation governing due diligence, to develop effective rules. This should include a comprehensive and rigorous process of due diligence, comprehensive understanding of risks, wide scope, full transparency and strong enforcement. Only with strong and effective legislation will the UK be able to ensure that the products consumed here do not contribute to climate breakdown, the biodiversity crisis and human rights abuses against forest communities.

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[1] A 2018 analysis by Blackrock Investment Institute (an arm of BlackRock, the world's largest asset manager) suggests that portfolios which perform better on Environmental, Social and Governance factors are likely to be more resilient in economic downturns. BlackRock Investment Institute, *Sustainable Investing: A 'why not' moment*, 9 May 2018, available at https://www.blackrock.com/corporate/insights/blackrock-investment-institute/publications/sustainable-investing-is-the-answer.

A Morningstar analysis of 206 US sustainable equity open-end and exchange-traded funds against their peers, found that for the first quarter of 2020, 44 percent of sustainable equity funds ranked in the top quartile of returns, 70 percent ranked in the top half and 11 percent ranked in the bottom quartile. This shows that sustainable funds significantly outperformed their peers. Morningstar. *Sustainable funds weather the first quarter better than conventional funds.* 3 April 2020, available at https://www.morningstar.com/articles/976361/sustainable-funds-weather-the-first-quarter-better-than-conventional-funds

[2] A recent report from the UK Global Resource Initiative noted: "The last decade has seen a steady increase in voluntary commitments from businesses and governments globally to halt deforestation, yet 2020, a key milestone for many of these commitments, has seen insufficient progress made by business (including the financial sector) and government alike", Global Resource Initiative Taskforce, Final recommendations report 2020, 30 March 2020, p.22, available at https://www.gov.uk/government/publications/global-resource-initiative-taskforce

This echoes similar findings globally. See for example, New York Declaration on Forests, *Protecting and restoring forests: A story of large commitments yet limited progress.* Five year assessment. September 2019, available at: https://forestdeclaration.org/

Rogerson, S. *Forest 500 annual report 2018 - The countdown to 2020*, Global Canopy: Oxford, UK. 2019, available at https://forest500.org/sites/default/files/forest500_annualreport2018_0_1.pdf

[3] A recent UNEP report reviewed various data on emerging diseases and highlighted that 75 per cent of all emerging infectious diseases in humans are zoonotic, passing from animals to humans. It emphasized the importance of ecosystem integrity, as in biodiverse systems it is difficult for one pathogen to spread or dominate. The two most prevalent primary drivers of past disease emergence are land use changes (31%) and agricultural industry change (15%). Changing climate also featured (6%). UN Environment Programme. UNEP Frontiers *2016 Report: Emerging issues of environmental concern.* 2016, available at https://environmentlive.unep.org/media/docs/assessments/UNEP_Frontiers_2016_report_emerging_issues_of_environmental_concern.pdf

The COVID-19 crisis has also sparked broader awareness of deforestation and biodiversity as a factor in pandemic risk – as referenced by Time Magazine, the Netflix documentary *Coronavirus*, and a recent Innovation Forum Business Brief.

[4] Global Resource Initiative Taskforce, Final recommendations report 2020, 30 March 2020, available at https://www.gov.uk/government/publications/global-resource-initiative-taskforce

[5] This briefing follows one published in July 2019 which looked at EU due diligence rules and made the case for EU action to tackle deforestation.

Global Witness & ClientEarth, *Strengthening Corporate Responsibility: the case for mandatory due diligence in the EU to protect people and the planet,* 23 July 2019, available at https://www.globalwitness.org/en/campaigns/forests/strengthening-corporate-responsibility/

[6] An investment chain is a concept that connects all of the actors involved in any investment project or operation. A typical investment chain includes many types of actors, such as companies, banks, and suppliers. All of the actors in the chain make the project possible, including those providing financing.

Lorenzo Cotula & Emma Blackmore. *Understanding agricultural investment chains: Lessons to improve governance.* Food and Agriculture Organization of the United Nations and the International Institute for Environment and Development. March 2014, available at https://pubs.iied.org/12574IIED/

[7] WWF and RSPB, *Risky business,* May 2020, available at https://www.rspb.org.uk/about-the-rspb/about-us/media-centre/press-releases/risky-business/

[8] Global Witness, *Money to Burn,* September 2019, available at https://www.globalwitness.org/en/campaigns/forests/money-to-burn-how-iconic-banks-and-investors-fund-the-destruction-of-the-worlds-largest-rainforests/

[9] G. R. van der Werf, D. C. Morton, R. S. DeFries, J. G. J. Olivier, P. S. Kasibhatla, R. B. Jackson, G. J. Collatz & J. T. Randerson. *CO2 emissions from forest loss*. Nature Geoscience, Volume 2, Issue 11, November 2009, available at https://www.nature.com/articles/ngeo671

[10] Pendrill, F., Persson, U. M., Godar, J., Kastner, T., Moran, D., Schmidt, S. and Wood, R. *Agricultural and forestry trade drives large share of tropical deforestation emissions*. Global Environmental Change, Volume 56. p.1–10, available at: https://doi.org/10.1016/j.gloenvcha.2019.03.002

[11] Global Forest Watch, *We Lost a Football Pitch of Primary Rainforest Every 6 Seconds in 2019*, 2 *June 2020*, available at: https://blog.globalforestwatch.org/data-and-research/global-tree-cover-loss-data-2019

[12] Philip G. Curtis, Christy M. Slay, Nancy L. Harris, Alexandra Tyukavina, Matthew C. Hansen, *Classifying drivers of global forest loss,* Science. 14 September 2018. Volume 361, Issue (6407). pP. 1108-1111, available at . https://science.sciencemag.org/content/361/6407/1108

[13] Global Witness, *Enemies of the State? How governments and businesses silence land and environmental defenders*, 30 July 2019, available at https://www.globalwitness.org/en/campaigns/environmental-activists/enemies-state/

[14]HM Government, *A Green Future: Our 25 Year Plan to Improve the Environment*, 2018, available at https://assets.publishing.service.gov.uk/government/uploads/system/uploads/attachment_data/file/693158/25-year-environment-plan.pdf

[15]HM Government. *Global Resource Initiative taskforce: Greening the UK's environmental footprint*, Media release, 18 July 2019, available at https://www.gov.uk/government/news/global-resource-initiative-taskforce-greening-the-uks-environmental-footprint

[16] Rogerson, S. *Forest 500 annual report 2018 - The countdown to 2020*, Global Canopy: Oxford, UK. 2019, available at https://forest500.org/sites/default/files/forest500_annualreport2018_0_1.pdf

[17] Thomson, E. & Rogerson, S. *Forest 500 annual report 2019 - The companies getting it wrong on deforestation*, Global Canopy: Oxford, UK. 2020. p.3-4, available at https://forest500.org/sites/default/files/forest500_annualreport2019_final_0.pdf

[18] Financial Times, *Cargill warns goal of halting deforestation will be missed*, 13 June 2019, available at https://www.ft.com/content/a67df690-8def-11e9-a1c1-51bf8f989972

Nestlé. *Cocoa*. Company webpage, accessed 28 April 2020, available at https://www.nestle.com/csv/raw-materials/nestle-cocoa-plan

[19] Climate Advisers & Ceres, *Business Risks from Deforestation*, Case Studies Series. November 2017, available at https://www.ceres.org/sites/default/files/Engage%20the%20Chain/ETC%20Climate%20Advisors%20Case%20Studies%20(1).pdf

Chain Reaction Research, *The Chain: Deforestation as a climate risk for investors*, June 2019 available at: https://chainreactionresearch.com/the-chain-deforestation-as-a-climate-risk-for-investors/

[20] The Ethics Centre, *Ethics Explainer: Social license to operate*, 23 Jan 2018., available at https://ethics.org.au/ethics-explainer-social-license-to-operate/

[21] Peter Hood, Julianne Hughes-Jennett, Irene Pietropaoli & Lise Smit, *A UK Failure to Prevent Mechanism for Corporate Human Rights Harms,* British Institute of International and Comparative Law. 11 February 2020, available at https://www.biicl.org/publications/a-uk-failure-to-prevent-mechanism-for-corporate-human-rights-harms

[22] Nestlé, *What is Nestlé's position on Human Rights and Environmental Due Diligence regulation?* n.d. available at https://www.nestle.com/ask-nestle/human-rights/answers/human-rights-environmental-due-diligence-regulation

[23] Investor Alliance for Human Rights, *Investors with US$5 trillion call on governments to institute mandatory human rights due diligence for companies.* Media release. 21 April 2020. https://investorsforhumanrights.org/news/investor-case-for-mhrdd

[24] Anti-money regulations refers to the multitude of legislation that governs the UK's anti-money laundering regime. This includes the Proceeds of Crime Act 2002, Money Laundering, Terrorist Financing and Transfer of Funds (Information on the Payer) Regulations 2017 and the Sanctions and Anti-Money Laundering Act 2018 (parts of which are not yet in force). Specifically covered here (The Money Laundering, Terrorist Financing and Transfer of Funds (Information on the Payer) Regulations 2017 – part 3) http://www.legislation.gov.uk/uksi/2017/692/part/3

[25] *The Timber and Timber Products and FLEGT (EU Exit) Regulations 2018*, available at http://www.legislation.gov.uk/uksi/2018/1025/made

[26] Specifically covered here (The Money Laundering, Terrorist Financing and Transfer of Funds (Information on the Payer) Regulations 2017 – part 3) - see ss. 27 – 30 of the 2017 regulations http://www.legislation.gov.uk/uksi/2017/692/part/3

[27] Art. 4 & 6 *Regulation (EU) No 995/2010 of the European Parliament and of the Council of 20 October 2010 laying down the obligations of operators who place timber and timber products on the market*, available at: https://eur-lex.europa.eu/legal-content/EN/TXT/?uri=CELEX%3A32010R0995

[28] Ministry of Justice, *The Bribery Act 2010,* March 2011. p. 27 , available at https://www.justice.gov.uk/downloads/legislation/bribery-act-2010-guidance.pdf

[29] Sanctions and Anti-Money Laundering Act 2018, available at http://www.legislation.gov.uk/ukpga/2018/13/contents/enacted

[30] The Independent Review of the Modern Slavery Act 2015, 2019, p.14, available at https://assets.publishing.service.gov.uk/government/uploads/system/uploads/attachment_data/file/815410/Government_Response_to_Independent_Review_of_MS_Act.pdf

[31] The Timber and Timber Products and FLEGT (EU Exit) Regulations 2018, available at http://www.legislation.gov.uk/uksi/2018/1025/made

[32] Office of the UN High Commissioner on Human Rights, *Guiding Principles on Business and Human Rights,* 2011, available at https://www.ohchr.org/Documents/Publications/GuidingPrinciplesBusinessHR_EN.pdf

[33] Human Rights Reporting and Assurance Frameworks Initiative, *UN Guiding Principles Reporting Framework with Implementation Guidance*, available at: https://www.ungpreporting.org/framework-guidance/download-the-reporting-framework/

[34] OECD, *OECD Guidelines for Multinational Enterprises 2011 edition*, available at http://www.oecd.org/daf/inv/mne/48004323.pdf

[35] OECD, *About Responsible Business Conduct,* webpage available at https://mneguidelines.oecd.org/about.htm

[36] "*The concept of due diligence under the OECD Guidelines for MNEs involves a bundle of interrelated processes to identify adverse impacts, prevent and mitigate them, track implementation and results and communicate on how adverse impacts are addressed with respect to the enterprises' own operations, their supply chains and other business relationships.*"

OECD, *OECD Due Diligence Guidance for Responsible Business Conduct,* 31 May 2018, p16, available at http://mneguidelines.oecd.org/OECD-Due-Diligence-Guidance-for-Responsible-Business-Conduct.pdf

[37] ClientEarth, *Putting the brakes on deforestation – a toolkit for forest conversion laws,* 22 May 2018, available at https://www.clientearth.org/toolkit-forest-conversion-laws/

OECD & FAO, *OECD-FAO Guidance for Responsible Agricultural Supply Chains,* 2015, available at https://www.oecd.org/daf/inv/investment-policy/rbc-agriculture-supply-chains.htm

[38] OECD & FAO, *OECD-FAO Guidance for Responsible Agricultural Supply Chains,* 2015, available at https://www.oecd.org/daf/inv/investment-policy/rbc-agriculture-supply-chains.htm

[39] This includes, for example the High Carbon Stock Approach http://highcarbonstock.org/the-high-carbon-stock-approach/

[40] FPIC involves obtaining local people's consent for any activities that may potentially affect their rights, land, resources, territories, livelihoods or right to food. This should be given freely, without coercion and before activities are planned or begin; it should be based on adequate information and independent advice; and the process should be reiterative – so that consent is gained at each part of the activity cycle. Fundamental to the right of FPIC for Indigenous peoples under international human rights law and as best practice for all affected communities, is the right of local communities to say 'no', to withhold their consent.

[41] Tiphaine Beau de Loménie & Sandra Cossart, *Stakeholders and the Duty of Vigilance — who are stakeholders and how can companies involve them in developing and implementing vigilance plans?*, 24 December 2017, available at

https://www.business-humanrights.org/sites/default/files/documents/Stakeholders%20and%20the%20Duty%20of%20Vigilance%20-%20%20Intl%20Rev.Compl_.%20%26%20Bus.%20Ethics.pdf

[42] ClientEarth, *Addressing the risks of a weak legal framework governing forest conversion in Liberia*, 2016., available at https://www.documents.clientearth.org/library/download-info/addressing-the-risks-of-a-weak-legal-framework-governing-forest-conversion-in-liberia/

[43] HM Government, *Transparency in Supply Chains etc. A practical guide*, 2017 available at https://assets.publishing.service.gov.uk/government/uploads/system/uploads/attachment_data/file/649906/Transparency_in_Supply_Chains_A_Practical_Guide_2017.pdf

[44] ClientEarth, *The EU Timber Regulation due diligence obligation: An appropriate tool*, 2015, available at

https://www.documents.clientearth.org/wp-content/uploads/library/2015-11-25-the-eu-timber-regulation-due-diligence-obligation-an-appropriate-tool-ce-en.pdf

[45] Mark Barthel , Steve Jennings, Will Schreiber, Richard Sheane, Sam Royston, James Fry, Yu Leng Khor & Julian McGill. *Study on the environmental impact of palm oil consumption and on existing sustainability standards*, February 2018, p 262. Produced for the Directorate-General for Environment, European Commission by 3Keel and LMC International, available at: https://op.europa.eu/en/publication-detail/-/publication/89c7f3d8-2bf3-11e8-b5fe-01aa75ed71a1

[46] Research undertaken for the European Commission found that: "The certification schemes still come with some principal limitations to be handled…one key issue is the challenge of monitoring, disclosure and enforcement".

ECOFYS, Milieu & COWI, *Feasibility study on options to step up EU action against deforestation*, 2018. p.128, available at https://op.europa.eu/en/publication-detail/-/publication/5f15470c-2bf2-11e8-b5fe-01aa75ed71a1/language-en

RSPB, *Using regulation as a last resort?: Assessing the performance of voluntary approaches.* 2015, available at http://www.rspb.org.uk/regulatorypolicy

[47] The Consumer Goods Forum, *Reflections as we move into a new decade,* 11 February 2020, available at https://www.theconsumergoodsforum.com/reflections-as-we-move-into-a-new-decade/

[48] Art 4, Commission Implementing Regulation (EU) No 607/2012 of 6 July 2012 on the detailed rules concerning the due diligence system and the frequency and nature of the checks on monitoring organisations as provided for in Regulation (EU) No 995/2010 of the European Parliament and of the Council laying down the obligations of operators who place timber and timber products on the market. Available at https://eur-lex.europa.eu/LexUriServ/LexUriServ.do?uri=OJ:L:2012:177:0016:0018:EN:PDF

[47] For example, see Office of the UN High Commissioner on Human Rights. *OHCHR response to request from BankTrack for advice regarding the application of the UN Guiding Principles on Business and Human Rights in the context of the banking sector*. June 2017, available at https://www.ohchr.org/Documents/Issues/Business/InterpretationGuidingPrinciples.pdf

[50] The 2011 *UN Guiding Principles on Business and Human Rights* (UNGPs) note that the responsibility of business enterprises to respect human rights applies to all businesses regardless of size, but recognises that the means through which enterprises meet that responsibility may vary according to this and other factors. UNGPs available at https://www.ohchr.org/documents/publications/GuidingprinciplesBusinesshr_eN.pdf

[51] OECD, *OECD Guidelines for Multinational Enterprises 2011 edition*, available at http://www.oecd.org/daf/inv/mne/48004323.pdf

[52] HM Government, *UK Government Response to the Independent Review of the Modern Slavery Act 2015*, 2019, p. 9, available at https://assets.publishing.service.gov.uk/government/uploads/system/uploads/attachment_data/file/815410/Government_Response_to_Independent_Review_of_MS_Act.pdf

[53] The OECD, for example, has specifically articulated how the OECD Guidelines on Multinational Enterprises apply to institutional investors, corporate lending and securities underwriting. Guidance on project finance and asset-based finance is currently being articulated. This also matched by findings or statements in complaints filed against ANZ bank and ING Bank under the OECD Guidelines for Multinational Enterprises. See for example, Equitable Cambodia and Inclusive Development International vs. Australia and New Zealand Banking Group, available at https://complaints.oecdwatch.org/cases/Case_343

Also, Milieudefensie et al vs. ING, available at https://complaints.oecdwatch.org/cases/Case_543

[54] For example, global agribusiness traders Archer Daniels Midlands and Cargill provide a range of financial services from London through ADM Investor Services and Cargill Risk Management respectively. UK supermarkets such as Tesco and Sainsbury's have established banking arms (although lending only applies to personal, not business, loans) and confectionary company Nestlé has a microfinance program for its dairy procurement. Agribusiness giant Olam, whose cocoa business is headquartered in the UK, also provides medium and long-term finance to smallholders – as detailed in its annual reports.

[55] 'City launches initiative to make London the world leader in Green Finance'. City of London media release. 14 January 2016, available at https://news.cityoflondon.gov.uk/city-launches-initiative-to-make-london-the--world-leader-in-green-finance/

[56] Global Witness, *Money to Burn*, September 2019, available at https://www.globalwitness.org/en/campaigns/forests/money-to-burn-how-iconic-banks-and-investors-fund-the-destruction-of-the-worlds-largest-rainforests/

[57] OECD, *OECD Guidelines for Multinational Enterprises 2011 edition*, p.27, available at http://www.oecd.org/daf/inv/mne/48004323.pdf

[58] Independent Review of the Modern Slavery Act 2015: Final Report, 2019, p. 14, available at https://assets.publishing.service.gov.uk/government/uploads/system/uploads/attachment_data/file/803406/Independent_review_of_the_Modern_Slavery_Act_-_final_report.pdf

[59] The UK Government has committed to updating the statutory guidance for the Modern Slavery Act in 2020 to include a template of the information organisations are expected to provide following a recommendation by the independent review which argued that this would increase uniformity and consistency between companies' statements, making it easier for government, civil society and consumers to analyse and compare statements.

HM Government, *UK Government Response to the Independent Review of the MODERN SLAVERY ACT* 2015, 2019, p. 8, available at https://assets.publishing.service.gov.uk/government/uploads/system/uploads/attachment_data/file/815410/Government_Response_to_Independent_Review_of_MS_Act.pdf

[60] The OECD highlights the importance of companies making commitments– as does the EU Non-Financial Reporting Directive. The Directive requires companies to disclose their policies on environmental and social matters because the Directive recognises that policies are important to reflect commitments, set out objectives and targets to drive a company's approach to issues.

[61] The Modern Slavery Act specifies that the board should be responsible for approving the Modern Slavery statement (signed by a director) and the government sees this as a collective responsibility, whilst the independent review recommended allocating a specific board member for this responsibility.

HM Government, *UK Government Response to the Independent Review of the Modern Slavery Act 2015*, 2019, p. 9, available at https://assets.publishing.service.gov.uk/government/uploads/system/uploads/attachment_data/file/815410/Government_Response_to_Independent_Review_of_MS_Act.pdf

[61] Independent Review of the Modern Slavery Act 2015: Final Report, 2019, p. 41, available at https://assets.publishing.service.gov.uk/government/uploads/system/uploads/attachment_data/file/803406/Independent_review_of_the_Modern_Slavery_Act_-_final_report.pdf

[62] Ministry of Justice, *Bribery Act 2010 Guidance,* March 2011, p. 24, available at https://www.justice.gov.uk/downloads/legislation/bribery-act-2010-guidance.pdf

[63] *OECD Due Diligence Guidance for Responsible Business Conduct*, p. 88, available at https://www.oecd.org/investment/due-diligence-guidance-for-responsible-business-conduct.htm

[64] NGOs Principle Elements, *Proposed UK Corporate Duty to Prevent Adverse Human Rights and Environmental Impacts*, March 2020, available at https://corporate-responsibility.org/wp-content/uploads/2020/04/Duty-to-prevent_principal-elements_FINAL.pdf

[65] *Independent Review of the Modern Slavery Act 2015: Final Report*, 2019, p. 39 1.4, available at https://assets.publishing.service.gov.uk/government/uploads/system/uploads/attachment_data/file/803406/Independent_review_of_the_Modern_Slavery_Act_-_final_report.pdf

[66] "While stringent legislation appears to strengthen private governance, such as by spurring lead firms to use their contractual bargaining power and implementation of due-diligence based procedures, less stringent legislation does not appear to spur change in company practices. This variation is understandable, given that the Bribery Act model provides an incentive for companies to avoid sanctions by implementing adequate due diligence procedures, while the Modern Slavery Act does not impose additional requirements (except in regards to reporting) and carries no sanction for non-compliance."

Genevieve Le Baron- Andreas Ruhmkorf, *Steering CSR Through Home State Regulation: A Comparison of the Impact of the UK Bribery Act and Modern Slavery Act on Global Supply Chain Governance*, Global Policy, Volume 8. Supplement 3. May 2017, available at https://onlinelibrary.wiley.com/doi/full/10.1111/1758-5899.12398

[67] *Independent Review of the Modern Slavery Act 2015: Final Report*, 2019, available at https://assets.publishing.service.gov.uk/government/uploads/system/uploads/attachment_data/file/803406/Independent_review_of_the_Modern_Slavery_Act_-_final_report.pdf

[68] *Opinion of Advocate General Geelhoed of 29 April 2004 (par.39) on the Judgment of 12 July 2005, Commission / France, C-304/02*
http://curia.europa.eu/juris/showPdf.jsf?text=&docid=49098&

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[69] Peter Hood, Julianne Hughes-Jennett, Irene Pietropaoli & Lise Smit, *A UK Failure to Prevent Mechanism for Corporate Human Rights Harms,* 11 February 2020, available at https://www.biicl.org/publications/a-uk-failure-to-prevent-mechanism-for-corporate-human-rights-harms

[70] For example, under Art. 225-102-5 of the French Code de commerce, available at https://www.legifrance.gouv.fr/affichCode.do?cidTexte=LEGITEXT000005634379&dateTexte=20190715